

UTRECHT, KLEINFELD, FIORI, PARTNERS

ATTORNEYS AT LAW

1900 M Street, NW Suite 500 Washington, DC 20036

Main (202) 778-4000

Facsimile (202) 842-5825

www.up-law.com

Frankie
Hampton

Digitally signed by Frankie
Hampton
DN: c=US, o=U.S. Government,
ou=FEC, cn=Frankie Hampton
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April 8, 2015

Jeff S. Jordan
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6916, Catalist, LLC

Dear Mr. Jordan:

This response is filed on behalf of our client, Catalist, LLC, ("Catalist" or "respondent") to the above-referenced complaint. For the reasons set forth below, this complaint is wholly without merit and should be dismissed.

The complaint makes three allegations against Catalist (and several hundred other respondents)¹: (1) that Catalist has provided federal candidates and committees with data and services at below market rates; (2) that Catalist as a common vendor allows federal candidates and committees to share data with soft money groups making independent expenditures; and (3) that Catalist was established, financed, maintained and controlled by the Democratic National Committee (DNC). The complainant provides virtually no facts to support these conclusory allegations, and those facts which are alleged—even if true—do not support a conclusion of any violation of the Federal Election Campaign Act, 52 U.S.C. § 30101, et. seq. (the "Act"). Simply put, the complaint is based upon a series of erroneous "facts" and incorrect legal conclusions regarding in-kind contributions, independent expenditures, coordination, affiliation, and common vendors and should be dismissed.

BACKGROUND

Catalist was formed in 2005 for the purpose of providing data and analytical tools to its customers. *See Exhibit A, Affidavit of Laura Quinn*. It was formed as an LLC and has investors as well as customers. *Id.* All Catalist investment activity is conducted in compliance with

¹The complaint appears to have named all individuals who ran as Democrats for the House and Senate in 2014. Yet there aren't even any allegations of specific wrongdoing by any of these Members and the complaint is totally devoid of evidence supporting a finding of wrongdoing. The complaint also includes as respondents numerous other organizations, some apparently simply because they have had contracts with Catalist some time in the past, again, with no allegations of specific activity that could violate FECA, much less any evidence to support such an allegation. In fact, many of these respondents have never had any type of contract with Catalist and Catalist has no data or other information from them. Furthermore, with respect to certain respondents and some of the allegations mentioned hereafter the statute of limitation has run. *See* 52 USC §30145(a). The Commission should dismiss those respondents outright and disregard any alleged facts that occurred more than five years ago.

securities rules and regulations. *Id.* In the past ten years Catalist has become a well-known and well-respected data services company with customers spanning the spectrum including charitable organizations, other nonprofits, major educational institutions, media organizations, state and local candidates and political committees, and the federal government.² *Id.*

By using Catalist's state-of-the-art data, tools, and expertise, organizations can have more information at hand, enhance their political planning and strategies, target individuals based on more varied demographic variables, achieve higher contact rates, receive information on program effectiveness, analyze results, and store those results for future use. *Exhibit A.* Catalist was established in light of the Federal Election Commission ("FEC" or "Commission") regulations and operates in full compliance with the law, providing services based on each customer's needs with a consistent market driven pricing schedule across the board. *Id.* Under its operating policies and procedures, Catalist does not make in-kind contributions to any customer. Catalist's customers are asked to sign a standard agreement, the Data Services and Licensing Agreement (DLSA) in writing, and all agreements are vetted for compliance with applicable laws and rules.

To be clear, Catalist's operations do not serve as the means of coordination among its customers who are prohibited from doing so. In fact, Catalist maintains and adheres to a written firewall policy, inclusive of legal staff briefings with respect to compliance with such firewall policy, in order to ensure that none of its staff are unwittingly the means of coordination between any Catalist customers who are prohibited from coordinating. See *Exhibit B, Catalist Coordination Prevention Policy.* In addition, the DLSA signed by all Catalist customers provides that any list sharing or data sharing arrangements must be conducted through a legally appropriate written list exchange or purchase agreements executed by the exchanging parties before Catalist will facilitate such exchanges. *Exhibit A.* Thus, Catalist is not involved in nor does it facilitate any impermissible coordination.

As stated above, Catalist was established in 2005 and commenced two private offerings for investors by the end of 2006. These offerings highlighted Catalist's unique standing as a company poised to position itself as a leader in data services at a time when data was becoming ever more utilized and valuable across many sectors of the economy. Throughout this process, the DNC played no role in the establishment of Catalist. *Id.* The complaint cites only to one of

² Catalist's past and present client list includes the Department of Justice and the Government Accountability Office; media organizations such as Acxiom, Amicus, AOL, Broadnet, ComScore, Pandora, Rentrak, Scarborough-Arbitron, Yahoo!, and The PEW Charitable Trusts; and numerous prominent universities including Yale University; Harvard University; Stanford University; University of Massachusetts, Amherst; Massachusetts Institute of Technology; The Ohio State University; New York University; Duke University; Tufts University; Indiana University; University of Missouri; Emory University; George Washington University; University of Connecticut; University of Texas-Austin; University of Wisconsin; University of Tennessee; Brigham Young University; Florida State University; University of Washington; University of California-Riverside; University of Chicago; University of Oklahoma; University of Pennsylvania; and the University of Virginia.

Catalist's founders, Harold Ickes, a long time Member of the DNC, as a link proving DNC establishment of Catalist. Mr. Ickes is only one of several hundred DNC Members and one of more than 35 members of the DNC Rules and By-laws Committee. He is not an officer of the DNC and has no role in the DNC's daily operations. He does not have the authority to act on behalf of the DNC and was not so doing when he joined in the formation of Catalist. No DNC official and no other DNC Member played a role with respect to the formation of Catalist. With regard to the DNC financing, maintaining or controlling Catalist, there are simply no such facts to support that conclusion. The DNC was not and is not a Catalist investor; it did not become a Catalist customer until 2010 (with its only other contact with Catalist being as a vendor for one Catalist customer in 2007, and a vendor for another Catalist customer in 2008) and has not had a contract with Catalist since 2010. *Id.* These facts give no basis for a finding that the DNC had any involvement in the establishment, financing, maintaining or controlling of Catalist.

SUMMARY OF ARGUMENT

This complaint filed by the Foundation for Accountability and Civic Trust (FACT), does not meet the requirements for a proper complaint. According to FEC regulations a proper complaint should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction. 11 CFR 111.4(d)(3). This complaint fails to do so as it does not allege specific facts upon which the FEC could base a finding or reason to believe a violation of the Act has occurred, and it does not provide evidence of any wrongdoing by respondents. Indeed, many of the respondents have never been customers of Catalist and have not provided any data or information to Catalist. One can only assume that the addition of hundreds of candidates to this complaint (the majority of whom have no connection to Catalist) was done not out of a concern to see the law enforced, but rather was politically motivated and calculated to tie up Democratic candidates and resources by involving them in what complainants hope will be a prolonged enforcement matter. The Commission should not allow itself to be manipulated in this way.

Catalist does not make in-kind contributions to any of its customers. As described below in the Argument section, this complaint does not provide any evidence in support of its in-kind contribution allegations. To the contrary, Catalist has a consistent usual and normal pricing structure within which all contracts fall. Catalist contracts are negotiated at arms length between Catalist and its customers. *Exhibit A.* No favored deals are provided to any federal candidates or committees, and the breadth of Catalist's customer base also demonstrates its legitimacy as a provider of data services in the marketplace *Id.*

Catalist does not facilitate any coordination between or among its customers. The FEC regulations regarding coordination are clear and require the complainant to show specific facts that a respondent had violated all three prongs of the test outlined in 11 CFR 109.21. Catalist operates in full compliance of these regulations and has established a written firewall policy so

that its employees who work with federal candidates and committees may not and are not in a position to facilitate any improper communication of a candidate's plans, needs, or strategies from federal candidates and committees to any independent expenditure. *Exhibit B*. With respect to customer data and lists in the possession of Catalist, each customer remains the owner of its data and lists. *Exhibit A*. The standard Catalist DLSA provides that if customers wish to purchase lists from other customers or wish to do a data or list exchange, these transactions are done pursuant to agreements entered into directly between those parties in compliance with other provisions of the FEC regulations. *Id*. Finally, with respect to alleged coordination, Catalist is not in fact in possession of information regarding customer communications that would meet the content standard of the FEC coordination regulations. Thus no coordination may occur.

The complaint allegation that Catalist was established, financed, maintained or controlled by the Democratic Party is wholly unsupported and untrue. In grasping at straws, the complaint points out that some Catalist investors are also DNC donors (or were DNC soft money donors prior to BCRA), and that one Member (acting in his individual capacity), out of the over 300 total Members of the DNC was a founder of Catalist. These incidental connections do not meet the Commission's affiliation standard found at 11 C.F.R. §300.2(c)(2)(i-x), nor are they sufficient to find reason to believe Catalist and the DNC are affiliated.

ARGUMENT

1. The Complaint Does Not Comply with the Requirements of 11 CFR Part 111 Governing the Filing of Proper Complaints and Should for this Reason be Dismissed

A proper complaint should contain a clear and concise recitation of the facts, which describe a violation of a statute or regulation over which the Commission has jurisdiction. 11 CFR 111.4(d)(3). The complaint here alleges: (1) that Catalist has provided federal candidates and committees with data and services at below market rates; (2) that Catalist as a common vendor allows federal candidates and committees to share data with soft money groups making independent expenditures, resulting in impermissible coordination; and (3) that Catalist was established, financed, maintained and controlled by the DNC. Yet, there is no factual basis or evidence supporting any of the Complainant's allegations.³

³ See MUR 6056 (Protect Colorado Jobs, Inc) Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 "In order for the Commission to determine that a complaint provides reason to believe a violation occurred, the complainant, under penalty of perjury, must provide specific facts from reliable sources that a respondent fails to adequately refute." See Also *Id* at n.12 "MUR 4960 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1-2 (emphasis added). As the Commission has stated, "[p]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find a reason to believe that a violation of the FECA has occurred." MUR 5467 (Michael Moore), First General Counsel's Report, at 5 (citing MUR 4960). Therefore, facts presented in the complaint that are not rebutted must be sufficient to sustain a violation of the law. Only if this threshold is met will mere be a reason to investigate. The RTB standard does not permit a complainant to present mere allegations that the Act has been

The complaint fails to allege any facts that could reasonably lead to the conclusion that Catalyst provided services to federal candidates and committees at below market rates. Complainant claims Catalyst has little interest in profit, but fails to state any facts suggesting Catalyst does not charge the "usual and normal" rate for its services, the standard required by 11 CFR 100.7(a)(1)(iii)(A).

In order to have substantive basis for coordination, a complaint must allege not only a suspicion of coordination or an opportunity for coordination, but must also allege facts supported by evidence that would constitute coordination, if proven true. The complaint at most alleges that some of the respondents have a common vendor, which is insufficient in itself to constitute coordination.⁴ The failure to allege actual coordination or provide any evidence supports only the conclusion that no such coordination occurred. In the absence of such evidence, these allegations are mere speculation and do not provide a basis for a bona fide complaint.

Further, the complaint is completely devoid of facts sufficient to constitute control of Catalyst by the DNC. The complaint only points to the fact that one of Catalyst's co-founders is one of over 300 members of the DNC and that one of Catalyst's investors formerly gave "soft money" to the DNC. The DNC is not in control of every entity with which its members are affiliated or to which its donors also provide funds. The complaint does not allege any facts suggesting the DNC has any hand in Catalyst's operations and only makes conclusory statements asking the FEC to assume that some control must be present.

The failure to allege or demonstrate actual in-kind contributions, coordination, or control by the DNC, and the fact that this Complaint is based on mere speculation, strongly suggests that the motive behind this Complaint is not to make sure that a violation of law is remedied, but rather to further some political motivation. Accordingly, the complaint fails to state any "facts which describe a violation" of the Federal Election Campaign Act. The FEC should not allow a baseless complaint to divert scarce resources and require entities seeking only to comply with the law to incur unnecessary legal costs. To the extent that the complaint asserts any facts, these purported facts are demonstrably erroneous as described in each section below.

violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges. And, contrary to our colleagues' suggestion in their Statement of Reasons in MURs 6051 & 6052 (Wal-Mart Stores, Inc.), the RTB standard is not met if the Commission simply "did not have .. sufficient information to find no reason to believe a violation occurred." Statement of Commissioners Cynthia Bauerly and Ellen Weintraub at 2 (emphasis added). To do so would reverse the standard mandated by the Act. We cannot simply ignore the Act. The Commission must have more than anonymous suppositions, unsworn statements, and unanswered questions before it can vote to find RTB and thereby commence an investigation. "Mere 'official curiosity' will not suffice as the basis for FEC investigations .." *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981)"

⁴ "[t]o meet the fourth conduct standard – which turns on the involvement of common vendors – the common vendor must use or convey information." FEC Advisory Opinion 2003-37, n.10 (citing 11 CFR 109.21(d)(4)(iii)). Catalyst itself makes no communications covered by FECA so it does not use any direct information for this purpose.

2. Catalist Does Not Make In-Kind Contributions to Any Federal Candidates or Committees; Nor Has It Made Any Excessive or Prohibited Contributions

Catalist does not make in-kind contributions. As described herein, it operates as a for-profit business and sells services and data to its customers through an established commercial process whereby all agreements are negotiated at arms length and the fees charged are the usual and normal fees established via a consistent pricing structure. *Exhibit A*. Despite what the complainant incorrectly alleges, Catalist does not provide favored deals to any federal candidates or committees and is a legitimate provider of data services in the marketplace.⁵ *Id.*

FEC regulations provide that the provision of any goods or services to a political committee without charge or at a charge, which is less than the usual or normal charge for such goods or services, is a contribution. 11 C.F.R. §100.52(d)(1). The regulations further provide that the "usual and normal" charge for goods or services means the price of those goods or services in the market from which they would ordinarily be acquired at the time. 11 C.F.R. §100.52(d)(2).

The Commission evaluated the issue of "normal and usual" in regard to the fair market value for renting email lists in 2010 in Advisory Opinion 2010-30 (Citizens United). There, the Commission stated that "[b]ecause the 'fair market price' is the price of the list in the market in which lists are ordinarily rented at the time of the rental, the 'fair market price' is the usual and normal charge for renting the list." Advisory Opinion 2010-30. Therefore, as long as Citizens United did not rent its list to federal candidates or political committees for less than the usual and normal charge, the rental of the list did not constitute an impermissible expenditure. *Id.* Similarly, since Catalist does not offer services to federal candidates and political committees for less than the usual and normal charge, there is no basis to determine that Catalist made an in-kind contribution to any of its customers.

Complainant's sole source of support for its allegations of below market pricing is its specious claim that "Catalist has actively solicited investments from the Democratic Party's former mega soft money donors to finance its operations" in order to charge "its customers in the political and advocacy market a lower rate". This is wholly untrue. As has been widely reported, the provision of data and information services is a legitimate business opportunity in the political

⁵ The complainant in his analysis states, "[b]y its own admission, Catalist has little interest in making a profit." This statement is not attributable to Catalist and is generated by the plaintiff through paraphrasing the statements of a third party author. Furthermore, the complainant bases this allegation on his own earlier statement that is incorrectly attributed to the author, saying: "As a result, Catalist admits to charging its federal campaign and political party customers discounted prices below the usual and normal charges commensurate with services provided to its customers. *Id.* (citing to an earlier cite at 176)." In fact, Catalist is not cited as making such a statement on page 176 of The Victory Lab nor any of the other pages the complainant cites. This reckless use of attributions and statements cited to Catalist sheds further light on the complainant's willingness to distort facts to fit their argument.

arena and elsewhere.⁶ Certainly, this is borne out by Catalist's customer base. Catalist does not serve only political customers but also counts among its customers many prestigious colleges and universities, media outlets, and the federal government. *Exhibit A*. The investments referenced in the complaint were made on the basis of the legitimate business opportunity Catalist represents and at each investor's own discretion. None of the investments into Catalist were made at the behest of any particular candidate or committee.

Here, the complainant does not point to a single clear example that shows Catalist has sold its data or services to any federal candidate or committee for less than the usual and normal charge. Accordingly, the complaint has not alleged any facts that suggest Catalist has not followed the regulations and sells all services and information to its customers by negotiating at an arms length and charging the usual and normal fee via a consistent pricing structure.

In fact, Catalist's pricing model relies on subscription-based revenues. These subscriptions are tiered into several categories to ensure that pricing reflects level of use by the customer or customer's organization. Within the tiers, customers are charged the same fees and the ultimate cost of the contract comes down to the amount of information a customer will need. Meaning one premium customer who needs access to multiple states will incur a higher cost than a premium customer who only needs a small selection of congressional districts. However, the pricing model applied to both is the same and determined by the fair market value as applied to such data.

Accordingly, as the information above demonstrates, Catalist charges its customers the usual and normal charge for the services rendered and negotiates all agreements at an arm's length. As a result, no in-kind, excessive or prohibited contributions occurred, and the complaint should be dismissed.

3. Catalist Is Not Involved in Any Impermissible Coordination between Its Customers

Catalist does not engage in or facilitate any coordination between or among its customers. Coordination is determined by the Commission using a three-prong test outlined in 11 CFR 109.21.

The first prong of the coordination test requires a communication to be "paid for by someone other than that candidate, authorized committee, political party committee, or an agent of any of the foregoing." Other than to state the obvious, i.e., that independent expenditures actually occurred, the complaint fails to cite to or provide any specific coordinated communications, or to refer to any actual expenditures at all, leaving the allegations incomplete.

⁶ See Jason Morris and Ed Lavandera, Why big companies buy, sell your data (Accessed April 3, 2015) <http://www.cnn.com/2012/08/23/tech/web/big-data-axiom/>; See also Shefali Luthra, Big Data Offer New Strategy For Public Health Campaigns (accessed April 3, 2015) <http://kaiserhealthnews.org/news/big-data-offer-new-strategy-for-public-health-campaigns/>.

Complainant suggests that all independent expenditures made by any outside group respondents are coordinated without giving a basis for that belief. Under any reasonable analysis, something more must be alleged, at minimum, a particular expenditure that is alleged to have been paid for and coordinated, so that respondents have a fair opportunity to rebut the allegations, however specious, that have been made against them.⁷

The second prong of the Commission's test is the "content" standard. Catalist has in its possession no information regarding the content of any client communications before they are made public. Here again, the complaint only points to the fact that many of Catalist's customers make independent expenditures, which is their constitutional right, and fails to specify any particular communication that the FEC should examine. The frivolity of this allegation is demonstrated by the lack of even one communication being attached to the complaint, and certainly, the content prong cannot be alleged, let alone proven, without it.

The third prong of the coordination analysis is the conduct standard. The complaint attempts to meet this standard by simply stating that the respondents share a common vendor, Catalist. The FEC has previously determined that merely sharing a common vendor is not sufficient to meet this prong.⁸ To satisfy the third prong by relying on a common vendor, the complaint must also allege that the common vendor used or conveyed information. *Id.* The complaint makes no such allegations, and Catalist categorically denies that it occurred.⁹ Moreover, under the Catalist structure and as demonstrated in the implementation of Catalist contracts, customers retain ownership of their data and information provided to Catalist. Such data is shared between clients only pursuant to list share agreements entered into between the customers pursuant to the requirements in the DLSA. *Exhibit A.*

Importantly, for this purpose, Catalist has established a written firewall policy, so that its employees who work with federal candidates and committees may not and are not in a position

⁷ In regard to coordinated activity, the complaint incorrectly quotes Catalist's report "Aggregate Activities of Progressive Organizations in 2008." The complaint says that "targeting differences... were complimentary," and tries to suggest Catalist was providing services free of charge. The sentence in fact says that the differences were "complementary" suggesting the complaint either misquoted the report or has attempted to give the statement a different meaning than what was actually meant by the report. "Results suggest that targeting differences between federal and independent groups, and their new, sophisticated data, were complementary." Catalist. *Aggregate Activities of Progressive Organizations in 2008, Compilation of Data from Catalist Subscribers* at 7. (Summer 2009). This is simply an ex post facto analysis of what occurred in the 2008 election cycle and sheds no light on alleged coordination.

⁸ FEC Advisory Opinion 2003-37 (ABC), n.10 (citing 11 CFR 109.21(d)(4)(iii)).

⁹ The complaint claims Catalist and Democrats "bragged to writer Sasha Issenberg about the immediate and practical benefit of this link," pg 22 of the complaint citing *The Victory Lab*. Keeping in line with the complainants willingness to make false attributions to Catalist, *The Victory Lab* quote cited by the complainant as "bragging" by Catalist and Democrats is in no way attributed to Catalist in the book and simply an out-of-context statement from the book that is only attributable to the author. Nothing that appears above or below the quoted text suggests that Catalist or any other groups agreed with or conveyed the quoted statement.

to facilitate any improper communication of a candidate's plans, needs, or strategies from federal candidates and party committees to any independent expenditure organizations. *Exhibit B*. This policy is in accordance with the FEC's safe harbor for establishment of a firewall provision, which provides that the conduct standard is not met "if the commercial vendor, former employee, or political committee has established and implemented a firewall" that is a written policy designed to "prohibit the flow of information between employees..." 11 CFR 109.21(h)(1)-(2).

Without any facts suggesting the respondents used impermissible information, transferred through Catalist, to make any specific communications, and evidence that Catalist satisfies the 11 CFR 109.21(h) safe harbor provision, there is no basis for the FEC to conclude that impermissible coordination occurred, and the complaint should be dismissed.

4. Catalist Was Not Established, Financed, Maintained or Controlled by the DNC

The allegation that Catalist was established, financed, maintained or controlled by the Democratic Party or DNC is wholly unsupported and untrue. Complainant cites only two facts: (1) one of the Catalist founders happens to also be one of the several hundred DNC members, and (2) two of the Catalist investors happen to also be two of thousands of DNC donors. These two facts are inconsequential and are clearly insufficient as a basis to allege that Catalist was established, financed, maintained or controlled by the DNC.

When Catalist was established, neither the DNC as an entity, nor its official or staff leadership, as individuals, had a role in the establishment of Catalist. *Exhibit A*. They were simply uninvolved. The DNC had no contract or other ties to Catalist at the time of Catalist's establishment. *Id*. One overlapping DNC member as a Catalist founder cannot, as a matter of law, establish affiliation.

Catalist was financed by its individual investors. The DNC provided no funds, directly or indirectly, to the formation of Catalist. *Exhibit A*. In fact, the DNC did not become a Catalist customer until 2010 (with its only other contact with Catalist being as a vendor for one Catalist customer in 2007, and a vendor for another Catalist customer in 2008) and has not had a contract with Catalist since 2010. *Id*. One or more overlapping individuals, as both DNC donors and Catalist investors cannot, as a matter of law, establish affiliation.

Catalist is maintained and controlled by its own independent Board of Managers, which by virtue of Catalist's organizing documents is vested with this power. *Exhibit A*. The DNC neither directly or indirectly maintains or controls Catalist. The DNC has no voting power or other decision-making authority. Its customer contract was only for 2010, demonstrating the arms-length nature of the relationship while it existed, and providing no basis for a finding that the DNC established, financed, maintained, or controlled Catalist.

100-411010-1000

In regard to the applicable regulations, the complainant neglects to mention that when the Commission evaluates whether an organization is directly or indirectly established, financed, maintained, or controlled by a federal committee the Commission reviews ten factors to examine the relationship between the sponsor and the entity; it does not simply handpick only those that could possibly apply in the same manner the complaint selects only two that still arguably do not apply. *See* 11 C.F.R. §300.2(c)(2)(i-x); *See also* AO 2004-33 (Rippon).¹⁰ A review of all ten factors of the test demonstrates that the DNC does not meet the elements that would indicate control over Catalist that include whether the sponsor: owns controlling interest in the voting stock or securities, *Id.* at §300.2(c)(2)(i); has the authority or ability to direct or participate in governance, *Id.* at §300.2(c)(2)(ii); has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members, *Id.* at §300.2(c)(2)(iii); has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship, *Id.* at §300.2(c)(2)(v); has any members, officers, or employees who were members, officers or employees of the entity that indicates a formal or ongoing relationship or that indicates the creation of a successor entity, *Id.* at §300.2(c)(2)(vi); provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct or indirect payments for administrative, fundraising, or other costs, *Id.* at §300.2(c)(2)(vii); causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity, *Id.* at §300.2(c)(2)(viii); or have similar patterns of receipts or disbursements that indicate a formal or ongoing relationship, *Id.* at §300.2(c)(2)(x). *See Also Exhibit A.* These eight factors are not ever alleged by any aspect of the complaint.

As mentioned above, the complaint only elects to include two factors of the test when discussing the manner in which the Commission evaluates the overall relationship between the parties. They are whether a sponsor has a common or overlapping membership with the entity that indicates a formal or ongoing relationship, 11 C.F.R. §300.2(c)(2)(iv), and whether a sponsor, directly or through its agent, had an active or significant role in the formation of the entity, *Id.* at §300.2(c)(2)(ix). As described herein, the uncontroverted evidence supplied in this response demonstrates clearly that neither of these factors is satisfied as well.

Accordingly, when considering all factors of 11 C.F.R §300.2(c)(2)(i-x) the allegations made in the complaint based on nearly no facts offered by the complainant are insufficient and it is clear that Catalist is not and never was established, financed, maintained or controlled by the DNC.¹¹ Complainant's theory that Catalist is controlled by the DNC is based solely on the

¹⁰ "To determine whether an entity is directly or indirectly established, financed, maintained, or controlled by a candidate or Federal officeholder, the Commission examines the ten factors set out at 11 CFR 300.2(c)(2)(i) through (x) in the context of the overall relationship between the entity and the candidate or Federal officeholder." AO 2004-33 at 8.

¹¹ It is also important to note that the Act contains a five-year statute of limitation to actions arising out of violations of the Federal Election Campaign Act and the clock begins running at the time the action occurred. *See* 52 USC §30145(a). Claims about establishment by the DNC made in this complaint would have been ripe more than ten

relationships between a founder of Catalist, who happens to be one of several hundred members of the DNC, and a small number of investors that have also given to the Party. This fails to demonstrate the sufficient facts required to show Catalist is affiliated with the DNC. Based on the totality of these facts taken together this cause of action should be dismissed outright.

CONCLUSION

For the reasons stated above this complaint should be dismissed as devoid of facts and lacking any specific allegations that constitute a violation of the Federal Election Campaign Act. Mere speculation that violations may have occurred is not enough and the limited facts provided in the complaint do not provide a basis to justify additional investigations by the Commission. Moreover, this response and accompanying exhibits demonstrate conclusively that no violation occurred. Accordingly, MUR 6916 should be dismissed.

Respectfully submitted,



Lyn Utrecht
Eric Kleinfeld
Greg Holger
Utrecht, Kleinfeld, Fiori, Partners
1900 M St, NW Suite 500
Washington, DC 20036

Attorneys for Respondent

years ago and well outside the window for Catalist to need to defend itself against the allegations that are brought in regard to that period. As such, the Commission should determine that time period to bring a claim relating to the founding of Catalist has run and no legal action can now be brought regardless of whether any cause of action ever existed.
